(1)

Supreme Court, U.S.
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No. 97 1261 FEB 0 2 1998

IN THE

Supreme Court of the United States

October Term, 1997

JOHN W. NORTHEN,

Petitioner,

v.

CITY OF CHICAGO, LEROY MARTIN, MATT L. RODRIGUEZ, RAYMOND RISLEY, JERRY ROBINSON, LOUIS VELEZ, STEPHEN JACKSON, MICHAEL PEASE, and ROBERT HURST,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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36 pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the United States Court of Appeals for the Seventh Circuit err in finding Petitioner's Section 1983 claims premised on his removal from the active-duty roster and payroll of the Chicago Police Department time barred, even though this act occurred within the limitations period applicable to Petitioner's First Amendment retaliation claims?

2. Did the United States Court of Appeals for the Seventh Circuit err in affirming the dismissal of Petitioner's Section 1983 claims premised upon Respondents' denial of his rights under the Due Process Clause when he was removed from the CPD active duty roster and payroll and was *never* afforded either a pre or post termination hearing?

3. Did the United States Court of Appeals for the Seventh Circuit err in refusing to apply the standard of review set forth in this Court's decision in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit,* 507 U.S. 163 (1993), in determining that the allegations in Petitioner's complaint did not adequately plead a Section 1983 *Monell* claim against Respondents, City of Chicago, Martin, Rodriguez, and Risley?

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner John W. Northen respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this cause.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (Appendix "App." A., *infra*) is reported at 126 F.3d 1024 (7th Cir. October 8, 1997). The order of the trial court (App. B, *infra*) is unreported.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on October 8, 1997. That court's order denying Petitioner's petition for rehearing and suggestion for rehearing *en banc* was denied on November 4, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(l).

The jurisdiction of the district court was invoked under 28 U.S.C. § 1331 and the doctrine of pendent jurisdiction. The jurisdiction of the court of appeals was invoked under 28 U.S.C. § 1291.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, amend. I

United States Constitution, amend. XIV

42 U.S.C. § 1983

The Constitutional and statutory provisions involved are reprinted at Appendix C, *infra*.

STATEMENT OF THE CASE

Petitioner John Northen attempted to blow the whistle on fraud and corruption in the highest echelons of the Chicago Police Department ("CPD"). To date, his efforts have been neutralized by an ongoing cover-up which has destroyed his exemplary career and livelihood and forced him into early retirement.

In response to a politically rigged promotion process known as "ExamScam", Petitioner organized a multi-racial group of over six hundred of his fellow CPD sergeants and drafted certified letters on their behalf to the then federal prosecutor in Chicago and the Mayor of Chicago. The texts of these two letters have been included in the Appendix (App. D, *infra*) to provide this Court with a concise yet comprehensive overview of "ExamScam".

Petitioner's outspoken criticism of "ExamScam" resulted in a relentless series of adverse and pretextual retaliatory personnel actions taken against him by respondents, individually and acting in concert with themselves and others. The conspiracy was directed by the then top police official in the CPD, former Superintendent LeRoy Martin, one of the Respondents in this cause.

The relentless retaliatory actions by Respondents and others caused Petitioner to become clinically depressed. Petitioner was removed from the CPD active duty roster and payroll on November 18, 1991, as a result of his depression. Petitioner was *never* afforded any hearing by Respondents either before or after his removal from active duty regarding: (a) the causes of his depression; and (b) whether Petitioner could be returned to active duty if Respondents ceased their retaliatory activities against Petitioner and adequately investigated Petitioner's allegations relating to "ExamScam."

Petitioner filed this action alleging violations of 42 U.S.C. §1983 on November 17, 1993. The amended complaint at issue charged the individual Respondents with violations of Petitioner's rights under the First, Fourth and Fourteenth Amendments to the Constitution, and included pendent state claims. Petitioner also asserted two *Monell* policy claims against, among others, Respondent City of Chicago.

It is undisputed that Petitioner had a protected property interest under Illinois law in his continued employment as a CPD Sergeant. It was also conceded by Respondents in the Seventh Circuit that Petitioner's speech involved matters of public concern. A more detailed exposition of the allegations in Petitioner's amended complaint now follows.

Petitioner John W. Northen was appointed a sworn member of the Chicago Police Department ("CPD") on December 19, 1966. Petitioner advanced to the rank of sergeant in the CPD by 1985 and, along with 851 other CPD sergeants, took the 1987 CPD lieutenants promotional examination. The 1987 lieutenants promotional examination resulted in an eligibility list which was posted by respondent City of Chicago on March 14, 1988. Along with numerous other CPD sergeants, petitioner alleged that the examination process that resulted in this list was a "sham". Specifically, petitioner alleged that the 1987 CPD lieutenants promotional exam was rigged so that 80 percent of a candidate's total score was dependent upon how well the candidate performed during an oral examination or "oral

board", which was rigged. By relying so heavily on the subjective component of the overall examination *i.e.*, the oral board, petitioner alleged that those with "clout" within the CPD had an unfair advantage over those candidates without it. To make matters worse, the "oral board" raters (or examiners) gave substantial credit during the oral examination to a purportedly "correct" answer, *e.g.*, "notify the watch commander" — an answer which is not documented anywhere in the CPD's general orders. Certain candidates with "clout" were tipped in advance that they could increase their scores by giving this answer during their oral boards.

Immediately upon the posting of the 1988 eligibility list, petitioner and more than 600 other Chicago police sergeants *i.e.*, candidates, who took the 1987 examine challenged the exam in state court litigation. The litigation was directed by a committee called the 9171 Committee.

Petitioner served as the 9171 Committee's principal organizer, raised money to pay the group's attorney's fees, published and circulated several thousand copies of newsletters critical of what plaintiff and the Committee termed "ExamScam", circulated thousands of bumper stickers criticizing "ExamScam," and wrote letters to the Mayor of Chicago, and the U.S. Attorney for the Northern District of Illinois. Additionally Petitioner also appeared in a number of media reports regarding "ExamScam."

Subsequent to the filing of the lawsuit by the 9171 Committee, Respondents entered into a conspiracy, the purpose of which was to retaliate against Petitioner because of his efforts to bring to light the fraud and chicanery involved in the 1987-88 CPD lieutenants promotional examination and process. Petitioner also attempted to expose the coverup of "ExamScam" by the City's Administration.

In addition to his efforts to shed light on "ExamScam," Petitioner also criticized the CPD's policy of "rotating shifts" from late 1989 to early 1993. Petitioner even drafted a resolution which was passed by the Chicago City Council in Decem-

ber 1989 urging the CPD to abandon rotating shifts in favor of fixed shifts.

Respondents then subsequently engaged in a number of acts of retaliation which included numerous baseless reprimands and suspensions of Petitioner for purported infractions of CPD rules and regulations, threats of disciplinary action which never materialized, a precipitous decline in Petitioner's rating grades, repeated denials in job related benefits such as transfers to more desirable assignments, the denial of career enhancing skills through CPD-sponsored educational opportunities, and other disparate treatment, including the denial of benefits routinely accorded to similarly situated CPD sergeants assigned to district patrol.

As a direct result of these retaliatory acts, Petitioner became depressed. On October 18, 1991, Petitioner executed an affidavit at the request of the CPD's Retirement Board stating that he had been clinically diagnosed with depression which Petitioner indicated "resulted from adverse actions taken against me by the City of Chicago in retaliation for my truthful and critical statements on police matters of public interest which constituted violations of ordinances and regulations of the CPD."

Thirty days later, on November 18, 1991, Petitioner was involuntarily removed from CPD's active duty roster list and payroll and placed on the medical disability roll. Petitioner's placement on the CPD's medical disability roll on November 18, 1991 resulted in a 50 percent reduction in his pay. Although vested with authority to conduct a hearing regarding Petitioner's placement on the medical disability roll, none of the Respondents, including Respondent Martin — who had actual authority to conduct the hearing — ever afforded Petitioner with such a hearing at any time before or after his involuntary placement on the disability roll. Again, it is uncontested that at no time before, during or after November 18, 1991 was Petitioner ever provided with a pre- or post-termination hearing with respect to whether or not he could continue his job as a CPD sergeant

or any hearing which would have provided Petitioner with the opportunity to have Respondents' unlawful acts brought to light.

In addition to his Section 1983 claims against the individual Respondents, Petitioner further alleged in his complaint that Respondent City of Chicago had a custom and policy to deny members of the CPD who engage in protected First Amendment activities — such as whistleblowing as to fraud and chicanery associated with police promotional examinations — with any type of hearing following their involuntary placement on disability leave. Petitioner further alleged that Respondent City of Chicago had a custom and policy to harass or retaliate against whistleblowers like Petitioner who engage in protected First Amendment activities critical of the CPD and to cause such persons to be either outright fired or constructively discharged from the CPD, as was the case with Petitioner.

Petitioner further alleged in his complaint that he was falsely arrested without probable cause in November, 1993, and charged with a bogus criminal offense — a charge which was eventually dropped. The specifics relating to this allegation were that in October and November of 1993, while Petitioner was still on the medical disability roll, Petitioner sought to lawfully purchase a firearm. Following the mandatory waiting period, when Petitioner went to purchase his gun, he was jumped and arrested by five Chicago police officers — who happened to be out of their jurisdiction given that the gun shop was located in suburban Chicago — and also was detained at a suburban Chicago police station for approximately five hours. Petitioner was ultimately charged with "falsely impersonating a government official", in violation of 720 ILCS 5/32-5, based upon a false complaint filed by Respondent Velez. These charges were dismissed prior to trial by the Du Page County, Illinois State's Attorney's Office.

The district court dismissed Petitioner's complaint in its entirety, pursuant to Respondents' motion to dismiss brought under Fed. R. Civ. P. 12(b)(6).

The United States Court of Appeals for the Seventh Circuit reversed the trial court's decision, in part, and remanded. The Seventh Circuit ordered that Petitioner could proceed with his Section 1983 claim based on his arrest at the suburban Chicago gun shop and his subsequent detention at the police station. The Seventh Circuit held that, based on the allegations in Petitioner's complaint, the gun shop incident could be found to be a violation of Petitioner's rights under the First and Fourth Amendments.

However, the Seventh Circuit affirmed the trial court's dismissal of Petitioner's Section 1983 claims premised on Respondent's violation of Petitioner's due process rights, and affirmed the dismissal of Petitioner's *Monell* claims as well. Also, the Seventh Circuit found most of Respondents' retaliatory acts time-barred by the applicable statute of limitations. Further, the Seventh Circuit held that, even though it fell within the applicable statute of limitations, Petitioner's removal from the active duty roster and placement on the disability roll — which resulted in a 50 percent reduction in Petitioner's pay — was also time-barred because it was merely a "consequence" of Respondents' prior unlawful acts.

REASONS FOR GRANTING THE WRIT

The Court should grant the writ because the Seventh Circuit's opinion holding that Petitioner's Section 1983 claim premised on his removal from the CPD's active duty roster and payroll were time barred is in conflict with this Court's decision in *Delaware State College v. Ricks*, 449 U.S. 250 (1980). Petitioner's removal from the CPD was not merely a "consequence" of prior unlawful acts but was an "act" which violated his constitutional rights. Also, the Seventh Circuit's decision affirming the dismissal of Petitioner's Section 1983 claims premised on a denial of due process is in conflict with this Court's decision in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under the three-part test of *Mathews*, Petitioner clearly was denied due process. Finally, the Seventh Circuit's decision affirming the dismissal of Petitioner's *Monell* claims is in conflict

with this Court's decision in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993). Petitioner's complaint adequately alleged such claims under the standards of Fed. R. Civ. P. 8.

ARGUMENT

A. Petitioner's First Amendment Retaliation Claims Against All Respondents Were Timely Filed

As stated above, the Seventh Circuit concluded in its opinion that Petitioner's First Amendment retaliation claim based on his removal from the CPD's active duty roster was time barred because it was merely a consequence of Respondents' prior retaliatory acts. This conclusion is in direct conflict with this Court's decision in *Delaware State College v. Ricks*, 449 U.S. 250 (1980). In *Ricks*, this Court examined the issue of determining when the statute of limitations begins to run on an employment discrimination claim brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* The Court in *Ricks* held that assessing timeliness "requires us to identify precisely the 'unlawful employment practice' of which [petitioner] complains." *Ricks*, 449 U.S. at 257. In *Ricks*, the Court treated the allegedly discriminatory denial of tenure — rather than the resulting non-discriminatory termination of employment one year later — as the act which triggered the commencement of the limitations period.

The Seventh Circuit's decision holding that Petitioner's removal from the active duty roster was merely a "consequence" of prior unlawful acts is wrong. The Seventh Circuit misreads *Ricks* and has unnecessarily extended its possible scope and coverage. This Court in *Ricks* held that the applicable limitations period began to run when *Ricks* was denied tenure, rather than on the date his employment terminated. *Ricks* action was, therefore, time-barred. *See also Chardon v. Fernandez*, 454 U.S. 6, 8 (1981) (*per curium*). Indeed, the Court in *Chardon* noted that "[t]here were no other allegations, either in *Ricks* or in these cases, of illegal acts subsequent to the date on which

the decisions to terminate were made. As we noted in *Ricks*, '[m]ere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination.' *Id.*, at 257."

However, this is not a case in which a plaintiff receives advance notice that an adverse employment action is going to be taken against him but argues that the statute of limitations does not begin to run until the action has actually occurred. In other words, the statute of limitations with respect to Petitioner's Section 1983 claim cannot be deemed to have commenced prior to November 18, 1991. On this record Northen received no advance notice that he would be placed, — permanently as it turned out — on disability leave. As Petitioner alleged in his complaint, his removal from active duty and placement on the disability roll was Respondents' ultimate objective in silencing Petitioner's criticism of "ExamScam."

Also, unlike the situation in *Ricks* and *Chardon*, the Respondents took additional acts against Petitioner subsequent to his placement on the disability roll which substantially worsened his condition, including arresting and detaining Petitioner without probable cause at the suburban Chicago gun shop. Therefore, unlike *Ricks* and *Chardon*, this is not a case where the only actionable event occurred outside the two year limitations period.

As Petitioner argued in the Seventh Circuit, his situation is similar to that present in *Scherer v. Balkema*, 840 F.2d 437 (7th Cir.), *cert. denied*, 486 U.S. 1043 (1988). The Seventh Circuit in *Scherer* held that a Section 1983 conspiracy defendant can be held liable for overt acts committed in furtherance of a conspiracy which occur within the limitations period. Placing Petitioner on the medical disability roll on November 18, 1991 was certainly an overt act in furtherance of the Section 1983 conspiracy which Petitioner alleged was ongoing between and among the various Respondents. In fact, in the absence of this act, the unlawful objective of the Section 1983 conspiracy could not have been accomplished. Further, since one of the unlawful acts of Respondents occured within the limitations period, *i.e.*,

his arrest at the gun shop and subsequent detention at the police station, it makes no sense whatsoever to forbid Petitioner from proceeding on a First Amendment retaliation claim based on his removal from active duty, which also occurred within the limitations period.

Finally, there is strong policy reason for this Court to determine that the statute of limitations does not bar Petitioner's Section 1983 claims premised on his removal from active duty. By taking a variety of retaliatory actions against Petitioner over a lengthy period of time — but without actually depriving him of any liberty or property interest — Respondents accomplished their ultimate objective of causing great mental harm to Petitioner, and forcing his removal from active duty and, ultimately, from the CPD entirely. Petitioner did not know that he would become depressed and unable to work when the first retaliatory act was taken against him. In other words, the "Chinese water torture" method which the Respondents engaged in with respect to Petitioner was specifically designed to avoid a blatant discriminatory action against him, which would have obviously triggered the statute of limitations.

Petitioner alleged that his — involuntary — placement on the medical disability roll by Respondents was an act in furtherance of Respondents' conspiracy to retaliate against him for engaging in protected First Amendment activities. This act clearly could be found by a trier of fact to have constituted a constructive discharge of Petitioner, which resulted in a 50 percent reduction in his pay. In fact, Petitioner's disability benefits have now completely expired, *see* 40 ILCS 5/5-155 (1996), and Petitioner has been forced to collect his retirement pension.

These acts of Respondents, *i.e.*, Petitioner's placement on the disability roll, the failure to grant him a termination hearing, and the expiration of Petitioner's disability benefits, all occurred within the applicable limitations period. The Seventh Circuit's conclusion that Petitioner's Section 1983 claim against Respondents based on his removal from the active duty roster is time barred is wrong and should be reversed.

B. Petitioner Was Denied His Due Process Rights Because He Was Given No Opportunity For A Hearing Before An Impartial Tribunal Which Could Have Prevented Defendants From Retaliating Against Him Before He Was Constructively Discharged Or Which Could Have Restored Him To His Full Salary As An Active Duty CPD Sergeant Following A Determination That His Medical Disability Was Caused By Defendants' Violations Of Northen's Constitutional Rights

The Seventh Circuit's decision simply permits Respondents to engage in a policy of retaliating against CPD Sergeants who engage in whistleblowing activities, like Petitioner herein, with impunity. Petitioner suffered clinical depression as a result of Respondents' retaliatory actions. Petitioner was involuntarily placed on the medical disability roll because he admitted he was suffering from depression — a condition he claimed was caused by Respondents' unlawful actions. He was afforded no hearing before any impartial tribunal prior to his placement on the disability roll which could have stopped Respondents' retaliation or, following his placement on the disability roll, which could have restored him to his pre-disability salary and employment level — even though his condition was caused by a violation of his constitutional rights.

In its decision, the Seventh Circuit questions what purpose a post-termination hearing could have served in this case. The answer is obvious: it could have saved Petitioner's job and health.

Mathews is controlling; the Seventh Circuit's decision affirming the dismissal of Petitioner's Due Process claims —which were clearly timely filed — must be reversed. If this Court is going to allow Respondents to drive a whistleblowing plaintiff like Petitioner into a state of depression through a series of retaliatory acts and forbid Petitioner a remedy under the federal civil rights laws because a "termination hearing" could only have confirmed Petitioner's medical condition (which itself resulted from Respondents' retaliation), then the Court is permit-

ting Respondents "to produce a result which [they] could not command directly," *i.e.*, firing Petitioner for his protected speech. *See Speiser v. Randall*, 357 U.S. 513, 526 (1950); *see also Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

The Seventh Circuit's decision is entirely at odds with *Mathews v. Eldridge*, 424 U.S. 319 (1976). The Court in *Mathews* set forth the factors which determines whether due process has been met in any particular case: "First, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Mathews*, 424 U.S. at 355 (citation omitted).

In this case, Petitioner clearly had a substantial financial interest, in his continued employment as a CPD sergeant at full salary. The first factor certainly favors that Petitioner be afforded a fair hearing before an impartial tribunal regarding his removal from active duty.

Regarding the second *Mathews* factor, it should be obvious that, without any procedure afforded Petitioner to prevent Respondents' retaliation, his placement on the medical disability roll, without any post-placement hearing, permitted Respondents to retaliate against Petitioner at their pleasure.

Finally, regarding the Government's interest, establishing a procedure which could review cases like Petitioner's and prevent violations of constitutional rights would be neither fiscally nor administratively burdensome. Under the *Mathews* factors, Petitioner was denied due process when he was removed from active duty and placed on the disability roll — and not afforded any hearing on the matter.

Again, Petitioner was never afforded *any* hearing by Respondents to determine: (a) what the cause of his depression

was; and (b) whether or not the cause, *i.e.* Respondents alleged retaliatory acts, could be curbed or eliminated. The reasons why Petitioner was not afforded any type of hearing are obvious; Respondents did not want their conduct to see the light of day — which a hearing obviously would have done. This Court has repeatedly noted the important interest which due process plays in our society. The right to procedural due process is "absolute," and "the law recognizes the importance to organized society that those rights be scrupulously observed." *Carey v. Piphus*, 435 U.S. 247, 266-67 (1978). Thus, the "absolute right" to adequate procedures stands independent from the ultimate outcome of a hearing. *See Carey*, 435 U.S. at 266-67.

The Seventh Circuit was unusually blunt in its dismissal of Petitioner's Section 1983 claims based on the denial of his due process rights: "as for the failure to grant Northen a termination hearing, we cannot imagine what purpose such a hearing would have served." Petitioner has answered that question immediately above. Also, the Seventh Circuit's decision is contrary to one of its earlier decisions, *Parrett v. City of Connersville*, 737 F.2d 690 (7th Cir. 1984), *cert. dismissed*, 469 U.S. 1145 (1985).

Plaintiff in *Parrett* was the former chief of detectives of a small town who had enraged his superiors because he had aggressively investigated the daughter of prominent local citizen for allegedly forging checks. Parrett was subsequently transferred to line captain in the uniform force without reduction in pay. As a line captain, Parrett could not be fired from the police force without cause, under Indiana law. Parrett was given no work to do as line captain and assigned to a windowless room to sit in that had formerly been a storage closet. His room had a desk and chair but no telephone. Parrett's enforced idleness caused him to suffer a nervous breakdown; he was hospitalized on April 3, 1980 and took medical retirement from the police force on June 1, 1980. In *Parrett,* the Seventh Circuit concluded that the foregoing treatment of Parrett amounted to his constructive discharge from the police force. The Seventh Cir-

cuit, however, noted that that did not end the matter: "the only question would be then whether [Parrett] was given due process of law." 737 F.2d at 694.

Because Parrett — unlike Petitioner herein — was a union member, under the applicable collective bargaining agreement, he could file a grievance regarding his treatment by his superiors before an arbitrator. The arbitrator, however, ruled that he would not consider any evidence relating to events after Parrett's transfer to line captain, including the refusal to assign Parrett any police duties. Parrett also took medical retirement before the arbitrator decided whether Parrett's transfer violated the collective bargaining agreement. In affirming the jury's verdict that Parrett was denied due process of law, the Seventh Circuit stated:

> The problem here is not that union grievance machinery is not a state remedy, for as the product of a collective bargaining agreement with the city it is, or that it is inherently inadequate, for it is not, but that as administered in the present case it could not protect the plaintiff's property right in his job as a police officer. This is not to say that arbitration cannot satisfy the requirements of due process unless the arbitrator is empowered to award full common law damages. But if he cannot, then he must be able to prevent the harm to the grievant before it occurs, which requires faster action then was taken by the arbitrator in this case.

Parrett, 737 F.2d at 697.

Petitioner's situation is even more egregious then Parrett's. As a CPD sergeant, he was not a member of any union or covered by any collective bargaining agreement; thus, there was no union grievance procedure he could utilize to prevent Respondents' retaliation against him. Also, if, as the Seventh Circuit's decision suggests, the hearing relating to Petitioner's disability could consider only the question of whether Petitioner was fit for duty, then what impartial tribunal was made available

by Respondents to afford Petitioner the opportunity to protect himself from Respondents' retaliatory actions or to determine that Petitioner's disability was caused by the retaliatory acts of his superiors and that, therefore, Petitioner should not have suffered a 50 percent pay cut as a result of his depression? The answer is obvious: none.

How can the undisputed and uncontroverted fact that no process or tribunal was available to protect Petitioner from the retaliatory acts of Respondents support the Seventh Circuit's conclusion that Petitioner suffered no denial of due process when his pay was cut in half as a result of his placement on the disability roll. The answer, again, is obvious: it cannot.

Petitioner never received *any* hearing in this case; there is no procedure afforded CPD sergeants by which unconstitutional acts of retaliation can be heard and remedied; there is no procedure afforded CPD sergeants to receive full pay for medical conditions which are caused by the unconstitutional acts of their superiors. In summary, there is no due process for CPD sergeants who decide to blow the whistle on corruption within the force. This violates the Constitution and is actionable under 42 U.S.C. § 1983.

C. Petitioner's *Monell* Claims Against Respondents City, Martin, Rodriguez, and Risley Should Not Have Been Dismissed

Even though the Seventh Circuit reversed the district court's decision dismissing Petitioner's First Amendment retaliation claim against Respondents, the Seventh Circuit affirmed the dismissal of Petitioner's First Amendment *Monell* claims against Respondents City, Martin, Rodriguez, and Risley. Petitioner alleged in his complaint that the activities of the Respondents at the gun shop occurred pursuant to a policy of Respondent City to retaliate against whistleblowers like Petitioner. Respondents Martin, Rodriguez, and Risley were alleged to have been policy makers. That is all that Petitioner is required to plead under Fed.R.Civ. P. 8 to state a *Monell* claim

against the City. *See Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993); *see also Lanigan v. Village of Hazel Crest*, 110 F.3d 467, 580 (7th Cir. 1997). The Seventh Circuit's decision affirming the dismissal of Petitioner's First Amendment *Monell* claims should be reversed.

Also, the Seventh Circuit's decision affirming the dismissal of Petitioner's *Monell* claims against Respondent City regarding his denial of Due Process should also be reversed for the reasons set forth immediately above.

CONCLUSION

The Seventh Circuit's decision affirming the dismissal of Petitioner's First Amendment retaliation claims against Respondents on statute of limitations grounds should be reversed. Also, the Seventh Circuit's decision affirming the dismissal of Petitioner's Due Process claims against Respondents City, Martin, Rodriguez and Risley should be reversed. Finally, the Seventh Circuit's decision affirming the dismissal of Petitioner's *Monell* claims against Respondents City, Martin, Rodriguez, and Risley should be reversed.

WHEREFORE, Petitioner John W. Northen respectfully requests that this Honorable Court grant his petition for a writ of certiorari to the United States Court of Appeals for the Seventh District in this cause.

Respectfully submitted,

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